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Chairperson: Ms. Picco ..... (Monaco)

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The meeting was called to order at 3.05 p.m.

Agenda item 85: The rule of law at the national and international levels (*continued*) (A/65/318)

1. **Mr. Nickels** (United States of America) said that the rule of law was not only vital to maintaining peace and security, it was also instrumental in promoting trade and development, democracy, good governance and global health as well as protecting the environment, human rights and fundamental freedoms. It underpinned a multitude of daily transactions and interactions that took place around the world. A key to ensuring that nations assumed binding legal obligations under bilateral and multilateral treaties in order to achieve their collective goals was the effective implementation of those international obligations at the national level. Without effective implementation, treaty obligations were no more than words on paper and empty promises.

2. The United States was a strong proponent of respect for and adherence to the rule of law. Before it became party to a treaty, the Government — sometimes in consultation with the Congress and local and State authorities, private industry and civil society — reviewed the terms of the treaty to ensure that it could fulfil its obligations under that treaty. Private international law treaties that focused on the harmonization and unification of national laws relating to cross-border transactions frequently required such cooperation among authorities. It was also important to recognize that, often, the United States — like other countries — continued to fine-tune its implementation of treaties even after their entry into force.

3. The United Nations could play an important and constructive role in promoting the rule of law at the national and international levels as it worked to build domestic institutions and capacity. More than 40 of its entities were involved in rule of law activities in many countries around the world. His delegation supported efforts to coordinate such activities in order to maximize efficiency and avoid duplication.

4. **Mr. Manhiça** (Mozambique) said that his country welcomed United Nations efforts to enhance the rule of law at the national and international levels, which would facilitate the codification and progressive development of international law. The International Law Commission and the Sixth Committee played a key role in that respect. His delegation was pleased with the growing role of international institutions in ensuring that States upheld the rule of law, notably in the field of human rights and humanitarian law, and in combating impunity.

5. His country was in the process of strengthening its democratic framework and consolidating its legal institutions, both fundamental conditions for the promotion and respect of individual rights and freedoms and prerequisites for citizens to participate fully in nation-building and development. The Government had institutionalized an annual audit for the State budget in order to ensure more public accountability and curb corruption. It had also acceded to numerous international treaties, in particular those related to terrorism, money-laundering and human rights.

6. Leaders across the African continent subscribed to the importance of the rule of law, as evidenced by the African Union's New Partnership for Africa's Development, which addressed not only economic and social issues, but also matters related to accountability and good governance. Moreover, a growing number of countries were acceding to the African Peer Review Mechanism, a voluntary scheme aimed at ensuring good governance, more transparency, respect for human rights and compliance with legal obligations. Through that Mechanism, African countries could strengthen their democratic rule and governance structures by sharing and disseminating codes of best practices. As a prime believer in the virtues of the African Peer Review Mechanism, Mozambique had been among the first countries to subject itself to the scrutiny of its peers as part of that Mechanism.

7. **Mr. Park** Chull-joo (Republic of Korea) noted that the United Nations was involved in various projects for strengthening the rule of law in more than 125 countries. The Rule of Law Coordination and Resource Group and the Rule of Law Unit continued to be the convening mechanism not only for promoting the rule of law, but also for improving the coordination of United Nations rule of law assistance activities. Nonetheless, those activities remained a challenge, as they involved a myriad of actors and covered a wide array of endeavours, from law enforcement training and human rights protection to support for sustained economic development.

8. The Republic of Korea had adopted a monistic approach to the relationship between international law

and domestic law, as enshrined in article 6, paragraph 1, of its Constitution. Treaties concluded by the Government of the Republic of Korea as well as customary international law had the same status as domestic law, provided they were in compliance with the country's Constitution. In principle, once a treaty was concluded in accordance with the Constitution and promulgated pursuant to domestic legal procedure, it became part of domestic law without the need for special legislation. Only the Constitution took precedence over international law, as confirmed by the jurisdiction of the Constitutional Court, which had the judicial power to decide whether specific provisions of international law were consistent with the Constitution.

9. His delegation shared the view that more needed to be done to enhance international capacity for coordination among various stakeholders in order to improve the delivery of rule of law assistance. His delegation endorsed, in principle, the plan by the Rule of Law Coordination and Resource Group to support Member States in holding a high-level segment of the General Assembly on the rule of law.

10. **Mr. Badji** (Senegal) said that a just and effective international order based on the rule of law was essential, given the significant challenges posed by the promotion of peace, justice and sustainable development; the various crises with which the world was contending; and the myriad instances of non-compliance with international obligations. As the report of the Secretary-General (A/64/318) indicated, much remained to be done, notwithstanding the progress made thus far, to fortify effective multilateral cooperation based on the rule of law.

11. The success of efforts to promote the rule of law at the international level depended on strict compliance with generally accepted rules and principles, particularly those embodied in the Charter of the United Nations. Adherence to international law and the rule of law were inextricably linked, and frequent violations thereof and lack of political will to adhere thereto impeded the establishment of international relations based strictly on the principles of law. In that connection, fostering compliance with the rule of law constituted the core mission of the United Nations.

12. Given the cross-cutting nature of the issues and the diversity of actors involved, the coordination provided by the Rule of Law Coordination and Resource Group and the Rule of Law Unit was to be commended. The International Court of Justice played a particularly decisive role in that regard, through its work in promoting peaceful relations among States. It was also necessary to encourage mediation and strengthen mechanisms for managing the peace process, from preventive diplomacy to peacemaking to peacebuilding.

13. **Mr. Appreku** (Ghana), speaking in his national capacity, said that the Charter of the United Nations remained the foundation for the rule of law and must continue to guide and inform the behaviour and obligations of Member States. His delegation welcomed the joint assessment mission to his country, occurring at a time when Ghana was considering the desirability of acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The rule of law at the national and international levels would be strengthened by addressing challenges in conflict-ridden and post-conflict countries and supporting regional rule of law initiatives. Experience had shown that while regional organizations sought deeper cross-border integration as a necessary condition for accelerated development, the absence of values centred on the rule of law led to the disintegration of certain States, thereby destabilizing their neighbours and impeding regional integration efforts. In that regard, he welcomed the United Nations support for the West Africa Coast Initiative and the development of organized crime threat assessment exercises for host countries of United Nations peace operations.

14. The Ghanaian Constitution established the fundamental framework for the rule of law in Ghana. At the national level, it created independent bodies designed to enhance responsiveness, transparency and accountability in public life and provided for parliamentary oversight of the executive branch and the establishment of an independent judiciary. At the international level, it called for strict adherence to the principles and objectives of international organizations to which Ghana belonged, together with respect for the principles of international law and diplomacy in the conduct of Ghana's foreign relations.

15. In that connection, his country subscribed to the principles of the Charter of the United Nations as well as those of the founding treaties of the African Union and the Economic Community of West African States. It continued to support the African Peer Review Mechanism, which was designed to encourage the

highest standards in the rule of law at the national level. Ghana had incorporated into municipal law many international conventions covering a range of fields, including diplomatic immunity, law of the sea, counter-terrorism and international humanitarian law.

16. Despite the success of its democracy, Ghana had recently undertaken a constitutional review exercise to ensure that the rule of law continued to flourish in the country. The Rule of Law Resource Group, the Rule of Law Unit and other United Nations bodies were welcome to lend their support to that effort, and Ghana stood ever ready to support the rule of law activities outlined in the report of the Secretary-General (A/65/318).

17. **Mr. Gonzales** (Monaco) said that the United Nations, through the International Court of Justice, the International Law Commission and the United Nations Commission on International Trade Law, among other institutions, had contributed immensely to the development of case law and norms governing relations among States. It had played a major role in promotion of the rule of law at the international level; codification, development and application of an international legal framework; and establishment of international courts. Nonetheless, in order for the international rule of law to be strengthened, national laws must adhere to the principles promoted by the United Nations, including respect for human rights and fundamental freedoms. While the Secretary-General's report showed that the United Nations provided technical assistance to countries that wished to strengthen their rule of law, much more could still be achieved in the areas of organized crime, international corruption, transitional justice, property rights and sexual violence.

18. Considering the differences in interpretation of the concept of rule of law, his delegation encouraged the Secretary-General to take further action to identify obstacles to the domestication of international law in national systems and to take adequate action to overcome them. Lastly, Monaco supported the Secretary-General's proposal to convene a high-level meeting on the rule of law in 2011.

19. **Ms. Guo** Xiaomei (China) said that the rule of law at the international level consisted of two core elements: full and faithful implementation of the rules of international law and preservation of the overall interests of the international community. Discussion of laws and practices of Member States in implementing international law would help enhance mutual understanding, thus facilitating the national implementation of and compliance with international law. China took international treaties very seriously and fully honoured its treaty obligations. It had acceded to more than 300 multilateral treaties and concluded over 20,000 bilateral treaties; it had also adopted specific legislation to strengthen their implementation at the national level. In some instances, international treaties were directly applicable in China without the need for specific legislation.

20. China stood ready to increase exchanges with the United Nations and other Member States in an effort to uphold and improve the rule of law at the national and international levels.

21. **Mr. Tag-Eldin** (Egypt) said that enhancing respect for the rule of law was fundamental to maintaining international peace and security and promoting the effective protection of human rights and fundamental freedoms, economic growth and sustainable development. Achieving those goals at the national level required the support of the United Nations. To that end, the Organization should improve coordination among its different organs involved in the implementation of rule of law assistance programmes. It must develop a holistic approach in that regard, and also empower national Governments to follow their own vision, agenda and approach in implementing those programmes. In fact, experience in peacebuilding efforts had shown that the rule of law was strengthened when reforms adhered to the principles of inclusion, participation, transparency and national ownership.

22. The United Nations and its organs could credibly assume a leading role in promoting the rule of law only if they observed the letter and spirit of the Charter, international law and international humanitarian law. An effective multilateral system must be based on clear, transparent rules that applied to all players without selectivity, politicization and double standards. In that regard, it was important to establish clear criteria for Security Council action which went beyond those originally envisaged by the Charter. The consistent encroachment by the Security Council on the competence of the General Assembly and the Economic and Social Council, thus disregarding the delicate balance enshrined in the Charter, was a cause of serious concern, particularly as the Security Council in its current configuration and working methods was

incompatible with the principles of good governance at the international level. The Council should therefore be expanded and reformed as soon as possible.

23. **Ms. Naidoo** (South Africa) said that in order to be effective, international law must be implemented at the national level. Laws and practices of Member States not only gave effect to existing international law but also contributed to its development. The focus on national laws and practices in implementing international law was therefore of utmost importance. Accordingly, South African law gave prominence to the norms and standards of international law, thus ensuring that they played an important role in upholding and protecting the country's constitutional democracy.

24. Ghana's Constitution made provision for the incorporation of treaties into domestic law; it stipulated that customary international law was also the law of the Republic and required courts to consider international law when interpreting the Bill of Rights. Those courts had also relied on international law in reaching the conclusion that the death penalty was unconstitutional and that a proper balance should be struck between respect for human rights and the threat posed by terrorism.

25. **Ms. Millicay** (Argentina) said that strengthening of the rule of law was an essential condition for ensuring peace and security at both the national and the international levels. The interaction between the two levels was undeniable. The legislation and practice of States with regard to international law had a direct bearing on the effective application of international norms at the domestic level. Such legislation and practice could differ, depending on constitutional systems. In Argentina, which was a federal State, treaty law and customary international law were directly applicable in the domestic realm. Under the Argentine Constitution, treaties had pre-eminence over domestic laws, and some human rights treaties had constitutional standing and were understood to complement the rights and liberties recognized by the Constitution. Norms delegating competence and jurisdiction to supranational organizations under regional integration treaties also took precedence over domestic laws.

26. Compliance with international law was not limited to the domestic practice or legislation of States, however. As noted in the report of the Secretary-General, it also encompassed capacity-building, the fight against impunity and the peaceful settlement of disputes. Capacity-building was especially important in conflict and post-conflict situations, and priority should therefore be given in United Nations mandates to developing capacity to ensure the rule of law, in particular through the strengthening of domestic judicial and police systems. The commitment of Member States to such activities, through their participation in United Nations missions and in regional and bilateral initiatives, was essential.

27. The establishment of the International Criminal Court in 1998 had been a landmark achievement and, 10 years on, the Court was now playing a central role in the fight against impunity. However, in order to end impunity definitively, domestic investigation and judicial systems also had to be strengthened. Perpetrators of serious violations of human rights must be brought to justice. Fortunately, the international community had moved beyond the "justice versus peace" paradigm, in which justice often fell victim to de jure or de facto amnesties in conflict and post-conflict situations. Justice and peace were now seen as objectives that were not only compatible but complementary.

28. The International Court of Justice, the main judicial organ of the United Nations, and specialized tribunals, such as the International Tribunal for the Law of the Sea, played an important role in the settlement of international disputes, but there were other means envisaged in the Charter of the United Nations. When called upon to do so by an organ of the United Nations, including the General Assembly, the parties to a dispute had a responsibility to negotiate in good faith with a view to resolving the matter peacefully. They also had an obligation to act in good faith in order to ensure the success of good offices missions led by the Secretary-General or other United Nations officials. At the same time, States that were not parties to a dispute had a responsibility to refrain from taking actions that might hinder the parties from fulfilling their obligation to settle the dispute peacefully.

29. Regional cooperation and coordination through mechanisms such as the Southern Common Market and the Union of South American Nations were important for strengthening the rule of law and maintaining democratic order. The latter organization had unequivocally condemned the recent attempted coup d'état in Ecuador, and her Government seconded that

condemnation and affirmed its commitment to the preservation of democratic institutions, the rule of law, the constitutional order, social peace and full respect for human rights.

30. **Ms. Tupa** (Democratic Republic of the Congo), noting that the United Nations Millennium Declaration had affirmed the importance of the rule of law as a critical requirement for promoting security and prosperity, said that her country's laws and practices with respect to the implementation of international law were grounded in the monistic tradition and, consequently, the rules of international law need not be translated into domestic law, but could be applied directly by the judicial system. International law could thus penetrate into the daily lives of the people.

31. Respect for the rule of law and human rights could not prevail in a society in which the perpetrators of crimes were not held to account. The rule of law required the sound administration of justice to prevent impunity, which in post-conflict countries such as hers was essential in order to consolidate and preserve a lasting peace. The current state of positive law in her country made it difficult to prosecute new forms of crime that had emerged as a result of political conflict, including rape and other sexual violence used as weapons of war. Such crimes — like genocide, war crimes and crimes against humanity — fell under the jurisdiction of the military courts.

32. Nevertheless, several initiatives had been taken at the national level, despite the severely weakened state of the judicial system, to prevent and punish crimes of sexual violence and provide support for victims. The Sexual Violence Act, adopted in August 2006, had amended the Criminal Code, incorporating the rules of international humanitarian law relating to crimes of sexual violence and addressing the need to protect the population groups that were most vulnerable to such crimes. At the same time, the military courts were taking steps to deal with the issue, as evidenced by several recent verdicts, including the conviction and sentencing to life imprisonment of a group of soldiers for mass rape and crimes against humanity in the Songo-Mboyo trial. In that case, the court had directly invoked the Rome Statute of the International Criminal Court, finding that rape committed systematically on a mass scale against a civilian population constituted a crime against humanity.

33. While the national courts were certainly playing an important role in restoring the rule of law, a successful transition from war to peace could not occur without a mechanism capable of providing a sense of justice to all citizens, establishing or restoring public confidence, fulfilling the duty to remember and reconciling people and communities. In that context, the ongoing process of reform of her country's judicial system merited attention and support in international forums. Her Government remained determined to establish and maintain a justice system that was fair, responsible, ethical and efficient, in accordance with the principles of international law and the Charter of the United Nations. It had an ambitious national action plan for the promotion and protection of human rights, but implementing it would require technical and financial assistance and international cooperation. Her delegation therefore welcomed the work of the Rule of Law Unit and the Rule of Law Coordination and Resource Group. The latter should be equipped with the means to provide assistance for investigations and for the rapid identification, collection and preservation of information to assist in bringing to justice the perpetrators of serious crimes in post-conflict countries.

34. **Mr. Kohona** (Sri Lanka) said that strengthening the rule of law would help to contain discord, maintain peace, resolve disputes, promote development and enhance the quality of human existence. However, the concept must be understood in the context of the rich and differing values of Member States and groups of States within the international community. The principle of sovereign equality was a crucial pillar of the international rule of law and was enshrined in the Charter of the United Nations, and it must be respected as international rules were made and implemented. Any tendency to prescribe solutions to internal circumstances on the basis of experience elsewhere or of theoretical generalizations must be avoided. One size did not fit all.

35. The United Nations could and should do more to identify commonalities and ensure central coordination. It could provide leadership in capacity-building in post-conflict countries and in developing national legal frameworks, incorporating, as appropriate, international norms and standards. More coordination and cooperation between the various United Nations entities was essential in order to avoid duplication and waste of resources and to produce the

best results. The Rule of Law Unit should be strengthened in order to enable it to address a range of global challenges, including the promotion of democracy, human rights, sustainable development and peaceful co-existence and cooperation.

36. An important aspect of the rule of law at the international level was the fulfilment by States at the national level of their obligations under treaties and other international agreements. The United Nations could play a crucial role in capacity-building to enable States to meet those obligations. Sri Lanka was committed to complying with the treaties to which it was a party, and his Government made every effort to give domestic effect to international obligations. It had also always advocated the settlement of internal and international disputes by peaceful means. Even in the case of the Liberation Tigers of Tamil Eelam, a brutal terrorist group that had challenged the very existence of the State, his Government had sought to end the conflict through negotiations. Sri Lanka was committed to protecting the rights of all its people and enabling them to realize their dreams, and it stood ready to join other Member States in improving the rule of law at the national and international levels under the umbrella of the United Nations.

37. **Mr. Delgado Sánchez** (Cuba) said that his Government fully supported the constitutional Government of Rafael Correa, President of Ecuador, and condemned the attempted coup d'état against him, which had seriously threatened the institutional system and the rule of law in Ecuador. His Government also supported the efforts to prosecute those responsible.

38. States' fulfilment of their obligations under international treaties was essential to the rule of law at all levels. States should adapt their domestic legislation in order to comply with those obligations and should refrain from violating the letter of treaties to which they were parties. Promotion and strengthening of the rule of law at the national level should begin with recognition of the sovereign right of peoples to create legal and democratic institutions in line with their socio-political and cultural interests. The international community could not supplant or replace national authorities. Instead, it should work to strengthen national legal systems, but only at the request of the State concerned, without any political conditions and with due respect for the State's institutions and right to self-determination.

39. His delegation remained concerned about the unilateral exercise of extraterritorial civil and criminal jurisdiction by national courts when it did not emanate from international treaties or other obligations under international law. Such actions were politically motivated. His delegation also noted with concern that the national courts of some developed countries were increasingly and selectively seeking to judge matters that fell outside their jurisdiction. Those same States failed to recognize the compulsory nature of international law when they tried to justify plundering the riches of developing countries. Cuba condemned the enactment of national laws and the adoption of unilateral measures against other States and called for the immediate lifting of the economic, commercial and financial embargo imposed against it for more than 50 years.

40. **Mr. Alsubaie** (Kuwait) said that the recommendations contained in the Secretary-General's report were of the utmost importance for ensuring not only international peace and security but also justice and equality. Similarly, respect for the Charter of the United Nations and for international law was essential when confronting the challenges and threats facing the international community, as was the obligation to protect various rights and freedoms. Under his country's constitutional democracy, the rights and duties of citizens were guaranteed, as was respect for the rule of law by virtue of the separation of the three branches of government. Kuwait was one of the world's leading countries in terms of education, health care and the promotion of rights and freedoms. Moreover, its economic development plan for the following four years provided for a substantial investment in agriculture and infrastructure.

41. At the international level, Kuwait complied with the principles, laws and treaties that together promoted the rule of law through, for instance, non-interference in the affairs of other States and the peaceful settlement of disputes. The Arab-Israeli conflict was the greatest threat to peace and security in the region. Because the United Nations had been unable to find a solution, Israel felt free to flout international law. For example, settlement construction had continued, as had the blockade on Gaza, the demolition and Judaization of Jerusalem, the expropriation of land and the oppression of Palestinians. On 31 May 2010, Israel had raided an aid flotilla in international waters in the belief that it would not be held accountable.

42. Kuwait reiterated its support for the establishment of a Palestinian State with Jerusalem as its capital. The occupied Syrian Golan should be returned to the Syrian Arab Republic. Israel must desist from its repeated violations of Lebanese sovereignty, which violated Security Council resolution 1701 (2006), and withdraw from all occupied Lebanese territory.

43. More efforts were needed to promote respect for the rule of law at the international level, without selectivity. To that end, it was essential to find solutions to conflicts arising between principles of international and domestic law; to strengthen international dispute resolution mechanisms; to propose means of coordination with a view to avoiding conflict between international conventions at the international and regional levels; and to identify ways of raising awareness of international conventions and ensuring their implementation.

44. **Mr. Ayoob** (Afghanistan) said his delegation welcomed the dialogue with Member States recently initiated by the Rule of Law Coordination and Resource Group and the Rule of Law Unit and their efforts to ensure the overall coherence of United Nations efforts towards capacity-building in post-conflict countries. Member States should be kept abreast of United Nations activities that fostered the rule of law at the international and national levels.

45. Two decades of armed conflict and violence had destroyed or reduced the capacity of Afghanistan's governmental institutions, including in the rule of law and justice sectors. Since the adoption of the Constitution in 2001, however, the country had come a long way in consolidating the rule of law. With the support of the international community, the Government had taken steps to develop the human and institutional capacity of the justice sector; increase access to justice for all, especially women; improve governance; fight corruption; and strengthen its security forces.

46. Building on the commitments made at the 2010 International Conference on Afghanistan, his Government was taking additional steps to enhance the rule of law, including better provision of legal aid services, regulatory support for a major crimes task force and an anti-corruption tribunal and the initiation of a strategy for long-term electoral reform.

47. While expressing gratitude to the international community, non-governmental organizations and all who were committed to alleviating the plight of the Afghan people and ushering in a world where justice could prevail, he called for those partners to sustain and coordinate their support and assistance to Afghanistan.

48. **Mr. Thang** (Myanmar) said that in enacting its domestic legislation, Myanmar generally followed the international norms and standards of State practice that were consistent with international law and observed the principles set forth in the 1969 Vienna Convention on the Law of Treaties. Its Ministry of Foreign Affairs collected legal opinions on the strong and weak points of draft legislation. After political approval at the highest level, laws were not promulgated officially until they had been carefully analysed by a team of legal experts.

49. The rule of law at the national level was part of an unbroken chain through to the international level, the only difference being the scale of jurisdiction. Ever since the adoption of the Charter of the United Nations, Myanmar had been exercising the principles enshrined therein and stood ready to respond to the latest events shaping the landscape of international law.

50. **Mr. Luvanda** (United Republic of Tanzania) reaffirmed his country's dedication to domestic efforts to strengthen democratic institutions, improve access to justice, promote the rule of law and good governance and fight corruption. International treaties had to be incorporated into domestic legislation either through amendment of existing laws or enactment of new ones. His country was a party to the Vienna Convention on the Law of Treaties and its courts interpreted treaties in accordance with articles 31 to 33 of that instrument, facilitating the necessary interface between domestic legislation and international law, including recourse to remedies.

51. With regard to the rule of law at the national level, he expressed particular gratitude for United Nations technical assistance in the enactment of a comprehensive child law, which incorporated the provisions of the United Nations Convention on the Rights of the Child into Tanzanian law.

52. The Secretary-General's report pointed to a number of critical challenges, including restoration of the rule of law in post-conflict situations and the threats posed by organized crime, corruption and drug

trafficking. The United Nations was making commendable efforts to generate sustained and coherent approaches to those challenges, but his Government advocated more collective efforts towards achieving a world free from such global vices.

53. His country was engaging with regional partners to advance the rule of law and good governance. It fulfilled its international treaty obligations, among which were the upcoming consideration by the Human Rights Council of its universal periodic review, for which his Government hoped for technical assistance.

54. **Mr. Ulibarri** (Costa Rica) said that an international order based on the rule of law should encompass binding and non-binding norms; mechanisms for monitoring their application; conflict resolution institutions; and practical tools for averting impunity. The United Nations must be particularly vigilant about the legal framework in which it and its institutions, especially the Security Council, operated. The establishment of an Ombudsperson, in accordance with Security Council resolution 1904 (2009), to assist in considering delisting requests addressed to the Security Council Committee established pursuant to resolution 1267 (1999) was a positive development that should be applied to all sanctions regimes.

55. His delegation welcomed the fact that human beings were emerging both as protagonists and subjects in the international landscape of the rule of law, particularly in the field of human rights. It was encouraging to see that international criminal jurisdiction was now being applied to the actual perpetrators of the worst violations of international law, thanks to the United Nations, the ad hoc tribunals for Rwanda and the former Yugoslavia and, in particular, the International Criminal Court. The accused must not be allowed to evade justice.

56. At the national level, the development of the rule of law was essential for promoting the population's well-being and for national reconstruction in post-conflict countries and regions. A democratic political system, respect for human rights and establishment of the rule of law were not isolated phenomena. The better they were realized as a whole, the better were the opportunities for fighting poverty, promoting sustainable development, peacefully resolving conflicts and ensuring world peace. Democracy must not be regarded merely as the periodic holding of free and fair elections: it also implied freedom of association, expression and petition; legal safeguards; independence of the judiciary from the political branch; accountability and transparency; and respect for minorities.

57. **Mr. Adi** (Syrian Arab Republic) said that the current discussion was extremely important, coinciding as it did with the need to emphasize the principles and purposes of the United Nations insofar as the Security Council continued to encroach upon the mandate of the General Assembly, thereby diminishing the rule of law at the international level and impairing the mechanisms for application of the Charter. The General Assembly had emphasized the need for observance of the rule of law at both the international and the national levels, given the alarming proliferation of acts involving the use or threat of use of force, the occupation of sovereign States or their territories, and such other newly contrived concepts as pre-emptive war, relative sovereignty, responsibility for protection and the linkage of security, development and democracy with human rights. In that regard, unilateral measures had an adverse impact on the rule of law at the international level and on international relations.

58. All States were bound to respect and apply the principles of international law without selectivity. The sovereignty and independence of States were also to be respected, together with the right of peoples under occupation to fight for self-determination, independence and liberation. Further principles supported by his country were the settlement of disputes by peaceful means, non-interference in the internal affairs of States and respect for the equal rights of all, without distinction.

59. In the field of international relations, the rule of law was still far from established, owing to continuing exceptions to the rule, double standards and imposition of the will of the strong on the weak, which stemmed from the lack of effective deterrents and failure to treat States equally. The rule of law at the national level assumed a variety of forms as a function of the unique political, historical and cultural features characterizing individual States. Methods for the provision of technical and financial assistance should be developed with those features in mind and not turned into a tool for political pressure or a pretext for interfering in the affairs of States or diminishing their sovereignty. The rule of law was furthermore intertwined with human rights and democracy. Each of those elements should therefore be applied and strengthened in a balanced

manner, and each State should fulfil its obligations to promote and protect all human rights and fundamental freedoms.

60. **Ms. Valenzuela Díaz** (El Salvador) said that a State governed by a given legal order was not necessarily living under the rule of law. The latter was not a descriptive category, but rather an ethical principle. The concept of rule of law might entail the primacy of the law, responsibility of civil servants, judicial monitoring of constitutionality and promotion of fundamental rights.

61. Such elements were fully in place in El Salvador. The Constitution provided that the State was responsible for developing and defending the law, democratic institutions and the independence and cooperation of the three branches of power. Her country was committed to the peaceful settlement of disputes, primacy of international law, unrestricted promotion and defence of human rights, and compliance with international obligations in accordance with the Charter.

62. Article 144 of the Constitution provided that international instruments concluded between El Salvador and other States constituted laws of the Republic on entry into force. National legislation could not modify or rescind such instruments, which took precedence in the event of any conflict. The Supreme Court had upheld the binding nature of international legal instruments, which depended not only on ratification but on the pre-existing legal principle of *pacta sunt servanda*.

63. **Mr. Wada** (Japan) said that the rule of law was essential for the maintenance of peace and stability. His delegation supported the Rule of Law Coordination and Resource Group and the Rule of Law Unit and looked forward to further coordination efforts in order to avoid duplication and create effective synergies. Japan also attached great importance to the role of international courts in strengthening the rule of law at the international level: it had accepted the compulsory jurisdiction of the International Court of Justice and had contributed judges to the Court and to the International Tribunal on the Law of the Sea. Furthermore, it was the largest contributor to the budget of the International Criminal Court and continually sought to strengthen its support for the Court's human resources.

64. At the first Review Conference of the Rome Statute, the parties had adopted a definition of the crime of aggression. They should continue their efforts in order overcome the inherent ambiguities of that text; by its very nature, international criminal justice required a rigorous approach. Japan was ready to share its experience with any country considering accession to the Rome Statute.

65. Regional frameworks played an important role in promoting the rule of law at the international level, one example being the African-Asian Legal Consultative Organization, the activities of which Japan had always keenly supported. In addition to providing technical assistance for the establishment of the rule of law in the developing countries of South-East Asia in particular, Japan contributed to the valuable work of the United Nations Audiovisual Library of International Law.

66. **Mr. Şahinol** (Turkey) said that in order to uphold the rule of law, States must comply with the principles enshrined in the Charter, multilateral treaties and international law. The rule of law was connected with the responsibility of every State to uphold human rights and fundamental freedoms. Its exercise facilitated trade, development, democracy, good governance and the protection of the environment. However, its components should be more clearly defined on the basis of the Charter, the *pacta sunt servanda* principle and the Vienna Convention on the Law of Treaties (1969).

67. The United Nations could promote the effective implementation of international treaties through capacity-building, particularly in the case of developing States. Any inconsistency between domestic and international levels should be eliminated. Strengthening the rule of law at the international levels was also important in order to tackle climate change, terrorism and trafficking in weapons and drugs. The absence of a comprehensive convention on international terrorism therefore had repercussions for the rule of law. In order to ensure that the perpetrators of such crimes could find no safe haven, Member States must honour international extradition treaties.

68. **Mr. Stuerchler** (Switzerland) said that it was crucial for States to verify the compatibility of national legislation, and in particular draft laws, with international law. Switzerland did so through decentralized administrative monitoring. The relevant

ministries, particularly the Ministries of Justice and Foreign Affairs, systematically and automatically reviewed the compliance of all draft laws with international law, giving their opinion in the course of parliamentary debates. Preventive monitoring took place at various stages in the legislative process and acted as a reminder of the boundaries that must be observed. The system had several advantages, including transparency, coordination, specialist support, flexibility and pragmatism.

69. However, such mechanisms were not enough; the rule of law was a continuous process of calling into question accepted practice. It could conflict with other legitimate values, such as democracy: a majority could vote for a law that conflicted with international law. Switzerland was aware of such complexities, and continued to debate the extent to which popular initiatives ought to be limited by the Constitution.

70. His delegation commended the Rule of Law Coordination and Resource Group and the Rule of Law Unit and supported the idea of convening a high-level meeting of the General Assembly on the rule of law.

71. **Ms. Adams** (United Kingdom) said that her country was the only Member State actively engaged with all six international criminal tribunals. Her delegation therefore welcomed the arrest in France on 11 October 2010 of Callixte Mbarushimana on charges of war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo. The United Kingdom called on all States to cooperate fully with the tribunals, in particular where they were under an obligation to do so.

72. The current economic climate posed particular challenges for the Special Court for Sierra Leone, the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia, all of which relied on voluntary contributions. Her delegation urged donor countries to maintain their contributions to the extent possible. At the same time, it expected all of the tribunals to exercise restraint in their budgetary demands and to endeavour to make the most efficient and effective use of resources.

73. Some of the international criminal tribunals were approaching the end of their mandates. It was important to preserve their legacy by establishing mechanisms to carry out essential residual functions, such as the prosecution of fugitive indictees, protection of witnesses and preservation of archives. The United Kingdom would continue to support those ongoing tasks and would work towards the adoption in 2010 of a Security Council resolution establishing a residual mechanism for the international tribunals for the former Yugoslavia and Rwanda. The Special Tribunal for Lebanon, which was expected to issue its first indictment in the near future, was intended to end impunity for political assassinations in that country. The United Kingdom called on all States to recognize its independence and impartiality.

74. The first Review Conference of the Rome Statute had reaffirmed the principle of complementarity in the global fight against impunity. Her delegation called on all Member States that had not yet done so to ratify or accede to the Rome Statute. All States parties should take immediate steps to incorporate the Statute in their domestic legal systems. Her country was prepared to support such efforts.

75. The report of the Secretary-General rightly emphasized the role of the International Court of Justice in addressing disputes between States and delivering advisory opinions. Her delegation urged all States to accept the compulsory jurisdiction of the Court.

76. **Ms. Lalić Smajević** (Serbia) said that her delegation thanked the Secretary-General for his report, but would have liked it to have been issued earlier. Section II B, and in particular paragraph 25, referred to the advisory opinion of the International Court of Justice concerning the unilateral declaration of independence in respect of Kosovo. In view of the length of the advisory opinion, a single sentence on the topic was clearly insufficient for a report submitted to the Sixth Committee. Such a brief mention unduly simplified the advisory opinion, presenting it outside its intended context. Simplifications of an issue of such sensitivity and complexity could be counterproductive and misleading. Certain additional comments and precise quotations of the advisory opinion would be needed.

77. In paragraph 51, the advisory opinion took a narrow and specific approach to the question posed by the General Assembly. The Court had underlined that its advisory opinion did not address the legal consequences of the unilateral declaration of independence or the validity or legal effects of the recognition of Kosovo by third States. Within that scope, the Court had considered that general

international law contained no applicable prohibition of declarations of independence and had concluded that the declaration had not violated general international law.

78. Moreover, paragraph 56 specified that the Court had not been required to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori, on whether international law generally conferred an entitlement on entities situated within a State unilaterally to break away from it. Indeed, it was entirely possible for an act not to be in violation of international law without necessarily constituting the exercise of a right conferred by it.

79. The Court had reaffirmed that Security Council resolution 1244 (1999) and the Constitutional Framework remained in force. The province of Kosovo therefore remained a territory subject to an international regime, and its final status was undetermined. The political process designed to determine its future status, as envisaged in Security Council resolution 1244 (1999), paragraph 11 (e), had not yet run its course.

80. **Mr. Valero Briceño** (Bolivarian Republic of Venezuela) said that his country was steadily harmonizing its domestic legislation with the international instruments to which it was a party. International human rights instruments had equal authority with the Constitution. Where their provisions were more favourable, they took precedence over national legislation. National referendums were used to take decisions on the adoption of international agreements which might compromise national sovereignty or which provided for the transfer of competences to supranational bodies. The Constitution had been prepared by a constituent assembly through a referendum, in an unprecedented consultation with the people. Parliament was currently debating reforms to the Penal Code in order to update it and harmonize the various sources of criminal law.

81. In the absence of a democratic regime within the Organization, the attainment of an international system governed by the rule of law continued to be a utopian goal. Only by democratizing and rebuilding the United Nations could international law be applied equitably and transparently. For that purpose, it was essential to uphold the legal equality of States; their sovereignty, political independence and territorial integrity; and their right to use and administer their own natural resources. Disputes must be settled peacefully, without the use or threat of use of force.

82. Regional instruments also had a valuable role in strengthening the rule of law. In October 2010, the Heads of State of the Union of South American Nations had reaffirmed their firm commitment to the preservation of democratic institutions, the rule of law, constitutional order, social peace and unconditional respect for human rights. At the forthcoming summit, the Union would adopt a democratic clause in response to the failed coup in Ecuador.

83. His country condemned the abduction and attempted murder of President Rafael Correa of Ecuador, which had been aimed at resurrecting a historical phase that belonged to the past. The unity and integration of Latin America, together with the rise of new progressive, revolutionary, democratic and socialist forces, were signs of a new era of justice and solidarity.

84. **Ms. Schonmann** (Israel), speaking in exercise of the right of reply, said that it was unfortunate, if unsurprising, that the representative of Kuwait had chosen to taint the important current debate with an outburst of unfounded, politicized allegations that had no place in the work of the Committee. Out of respect for that work, she had no intention of responding in substance. However, she wished to remind the representative of Kuwait that people who lived in glass houses should not throw stones. She urged all delegations to show a professional spirit in accordance with the established practice of the Committee.

85. **Mr. Alsubaie** (Kuwait), speaking in exercise of the right of reply, said that his delegation stood by its remarks. Israel's policies defied international law, international humanitarian law and the Charter of the United Nations on a daily basis. The Arab Peace Initiative had been intended to bring an end to the conflict. However, Israel's decision not to extend the moratorium on settlement activities would strike a lethal blow to the peace process. It was unacceptable that Israel continued to inflict the worst forms of collective punishment on the Palestinian people. His delegation called on the international community to hold Israel accountable for its inhuman activities.

The meeting rose at 6.05 p.m.